

EXHIBIT 2

1 Hon. Tiffany M. Cartwright
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 10 JOANN LEDOUX, a single woman.
12 Plaintiffs,

13 12 v.
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15 13 OUTLIERS, INC. (d/b/a THESIS,
16 THESIS NOOTROPICS, FIND MY
17 FORMULA, and FORMULA), a
18 Delaware Corporation; DANIEL FREED,
19 individually; MATT RUBIN,
individually; BRAND
NUTRACEUTICALS, INC. (d/b/a
BRAND NUTRA), a New York
Corporation; BRAND PACKAGING
GROUP, INC. (d/b/a BRAND
NUTRACEUTICALS), a New York
Corporation; and John and Jane Does 1-5.
Defendants.

20 Defendants.
21

22 TO: CLERK OF COURT
23 AND TO: PLAINTIFF AND HER COUNSEL OF RECORD
24 STATE OF NEW YORK
25 COUNTY OF NEW YORK

BEFORE ME, personally appeared DANIEL FREED, who after first being duly sworn, deposes and says:

1. That affiant is over eighteen years of age, a resident of the State of New York and otherwise *sui juris*.

2. That all of the facts attested hereto are based upon personal knowledge, not information or belief, unless stated otherwise.

3. That affiant is competent to testify to the matters (facts) herein in his capacity as the Chief Executive Officer and Co-Founder of Outliers, Inc. (THESIS, THESIS NOOTROPICS, FIND MY FORMULA, and FORMULA), a Delaware Corporation identified as a named Defendant in the above entitled action, filed in the U.S. District Court, Western District of Washington by JOANN LEDOUX, a single woman and affiant reviewed the entire complaint with exhibits, and offers this affidavit based upon her personal knowledge of:

a. JOANN LEDOUX'S ordering history, address, transactional emails with the Defendant, OUTLIERS, INC., to include JOANN LEDOUX'S on-boarding process with Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis in March, 2021 (Shopify records), CartHook checkout records and checkout process, upon which MS. LEDOUX placing on March 18, 2021 her order to produce the products identified in the complaint;

b. On the CartHook checkout there was a checkbox conspicuously placed directly above the checkout button that stated something to the effect of "I have read and agree to the Terms and Conditions and Medical Disclaimer." Both the Terms and Conditions and the Medical Disclaimer were linked. It was not possible to purchase the

1 product if the checkbox was not checked; and

2 c. The consumer, User Terms and Conditions required by any consumer,
3 customer before ordering a product from Find My Formula, n/k/a OUTLIERS, INC., d/b/a
4 Thesis which Terms and Conditions constitutes a binding written agreement between Find
5 My Formula OUTLIERS, INC., d/b/a Thesis and the consumer, customer in this case JOANN
6 LEDOUX. (Attached as Exhibit "A" to this affidavit) is true, genuine and authentic copy of
7 the Terms and Conditions executed by JOANN LEDOUX on or about March 18, 2021 and
8 Medical Disclaimer (attached as Exhibit "B") all upon or near the time of her on boarding
9 process with Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis).

10 4. That affiant further asserts the attached Exhibit "A" is kept in the ordinary
11 course of business, by affiant, or the business record custodian, and kept in the file, without
12 alteration of JOANN LEDOUX from March 18, 2021 through present. This Exhibit was
13 made at or near the time MS. LEDOUX contracted with Find My Formula, n/k/a OUTLIERS,
14 INC., d/b/a Thesis on March 18, 2021, it was the regular practice of Find My Formula, n/k/a
15 OUTLIERS, INC., d/b/a Thesis to record the information set forth in the attached Exhibits
16 "A", "B" and "C", affiant is familiar with the records and the circumstances under which they
17 were made and the record(s) have been kept in a safe place, without alteration, to wit: in the
18 JOANN LEDOUX customer, consumer file through present.

19 5. That affiant asserts page 6 of the "Terms and Conditions" states:

20 "DISPUTE RESOLUTION AND CHOICE OF LAW"

21 "Any controversy or claim arising out of or relating to this contract, or the
22 breach thereof, shall be settled by binding arbitration administered by the
23 American Arbitration Association in accordance with its Commercial
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1 Arbitration Rules. The arbitration hearing shall take place in the Southern
2 District of New York, before a single arbitrator. Judgment on the award
3 rendered by the arbitrator may be entered in any court having jurisdiction
thereof.

4 Further, you agree that any issue or dispute arising out of or in connection
5 with your use of our site, intellectual property, the Terms, or any matter
6 concerning Company shall be governed by the laws of the United States and
7 the State of New York with venue in the Southern District of New York. If
8 any provision of the Terms is found to be invalid by any court having
9 competent jurisdiction, the invalidity of such provision shall not affect the
10 validity of the remaining provisions of the Terms, which shall remain in full
11 force and effect.

12 By using the site, you agree to comply with all applicable laws and regulations
13 of the United States. The material provided on the site is protected by law
14 including, but not limited to, United States copyright and trademark law and
15 international treaties. Company makes no representation that materials
16 contained in the site are appropriate or available for use in other locations and
17 access to them from territories where their contents are illegal is prohibited.
18 Those who choose to access the Services or site from other locations outside
19 the United States do so at their own initiative and are responsible for
20 compliance with applicable Local laws.”

21 6. Affiant further notes on page 1 states:

22 **“ACCEPTANCE OF TERMS AND CONDITIONS”**

23 “By making any use of our Websites (“Website” or “sites”), Services, and any
24 purchase from us, you expressly agree to the terms contained herein.

25 You consent and agree that your use of a keypad, mouse or other device to
26 select an item, button, icon, checkbox, to enter text, or to perform a similar
act/action, while using our sites, for the purpose of accessing or making any
transactions regarding any agreement, acknowledgment, consent, terms,
disclosures or conditions, constitutes your signature, including without
limitation of the United States Electronic Signatures in Global and National
Commerce Act, P.L. 106-229 (the “E-Sign Act”) acceptance and agreement
as if actually signed by you in writing. Be advised that all activity and IP

1 address information may be monitored. The right to use any product or service
2 you purchase from us is personal to you and is not transferable to any other
3 person or entity."

4 7. Affiant asserts JOANN LEDOUX agreed to all the Terms and Conditions with
5

6 Find My Formula, k/n/a OUTLIERS, INC., d/b/a Thesis which represents a binding
7 agreement between Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis and its affiliated
8 entities and JOANN LEDOUX, the customer.

9 8. Affiant attaches as Exhibit "C"another record in the JOANN LEDOUX
10 customer file kept by Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis reflecting her
11 order product history with Find My Formula, n/k/a OUTLIERS, INC., d/b/a Thesis.

12 FURTHER AFFIANT SAYETH NAUGHT

13 
14 DANIEL FREED

15 SWORN TO and subscribed before me this 12 day of November, 2024, by
16 DANIEL FREED.

17 
18 Notary Public

19 
20 (Print Name)

21 EDITH C ROJAS
Commission No. NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01-RO6200821
Qualified in New York County
Certificate on File in Kings County
Commission Expires February 09, 2025

22 Personally Known OR Produced

23 Identification DL California D22977242

24 Type of Identification Driver's license

25 DATED: November 13, 2024.

26 THE LAW OFFICES OF STUART N.
KAPLAN, P.A.

27 PGA Financial Plaza
3399 PGA Boulevard, Suite 150
Palm Beach Gardens, Florida 33410
Telephone: (561) 296-7900

1 Facsimile: (561) 296-7919
2 By: /s/ Stuart N. Kaplan
3 STUART N. KAPLAN, ESQUIRE
4 Florida Bar No.:647934
5 Email: skaplan@stuartnkaplanpa.com
Secondary Email:
rbailey@stuartnkaplanpa.com
6 *Attorneys for Defendants Outliers, Inc.,
Daniel Freed, and Matt Rubin*

7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on this date I caused true and correct copies of the foregoing
9 document to be served upon the following, at the addresses stated below, via the method of
10 service indicated.

11 **LAW OFFICE OF JOCELYN C STEWART, CORP.**

12 Jocelyn C. Stewart
13 1201 Pacific Avenue, Suite 600
14 Tacoma, Washington 98407
jocelyn@ucmj-defender.com

E-mail
 U.S. Mail
 E-filing

15 **MCTLAW**

16 Talis M. Abolins
17 Michael J. Cowgill
18 1325 4th Avenue, Suite 1730
Seattle, Washington 98101
19 tabolins@mctlawyers.com
mcowgill@mctlawyers.com

E-mail
 U.S. Mail
 E-filing

20 *Attorneys for Plaintiff*

21 Dated this 13 day of November, 2024 in Seattle, Washington.

22
23
24
25 /s/ Rosemary Bailey
26 Rosemary Bailey
Paralegal

Affidavit of Daniel Freed – Page 6
Case No: 3:24-cv-0508

Stuart N. Kaplan, P.A.
3399 PGA Blvd., Suite 150
Palm Beach Gardens, FL 33410
(561) 296-7900

EXHIBIT “A”

Terms and Conditions

CAREFULLY READ THESE TERMS & CONDITIONS BEFORE ORDERING

INTRODUCTION

These Terms and Conditions (“Agreement” or “Terms”) constitute a binding written agreement between OUTLIERS INC., and its affiliated entities (collectively “Company,” “we,” “us,” or “our”) and you (“you” or “Customer”). To make these Terms easier to read, the services offered by the Website are collectively called “Services.”

This Website is operated by the Company. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS WEBSITE. THESE TERMS OF USE DESCRIBE YOUR LEGAL RIGHTS AND RESPONSIBILITIES, AND BY ACCESSING OR USING THE WEBSITE OR SERVICE, YOU ACCEPT AND AGREE TO BE BOUND AND ABIDE BY THIS AGREEMENT. THESE TERMS FORM A LEGAL AGREEMENT BETWEEN YOU AND US REGARDING YOUR USE OF THE SITE ALONG WITH THE RELATED SERVICES, FEATURES, CONTENT, AND OFFERS PROVIDED ON THE WEBSITE. THESE TERMS ALSO INCLUDE A MANDATORY ARBITRATION CLAUSE. IF YOU ARE NOT WILLING TO BE BOUND BY THESE TERMS, INCLUDING THE DISCLAIMERS, YOU MAY NOT ACCESS OR USE THIS WEBSITE. IF YOU DO NOT UNDERSTAND AND AGREE TO ALL OF THESE TERMS, OR ARE UNDER EIGHTEEN (18) YEARS OF AGE, YOU SHOULD CEASE ALL USE OF OUR SITES AND LOGOFF IMMEDIATELY. Your use of this Website, purchase or use of any of our products constitutes your agreement to these Terms and Conditions.

ACCEPTANCE OF TERMS AND CONDITIONS

By making any use of our Websites (“Website” or “sites”), Services, and any purchase from us, you expressly agree to the terms contained herein.

You consent and agree that your use of a keypad, mouse or other device to select an item, button, icon, checkbox, to enter text, or to perform a similar act/action, while using our sites, for the purpose of accessing or making any transactions regarding any agreement, acknowledgment, consent, terms, disclosures or conditions, constitutes your signature, including without limitation of the United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act") acceptance and agreement as if actually signed by you in writing. Be advised that all activity and IP address information may be monitored. The right to use any product or service you purchase from us is personal to you and is not transferable to any other person or entity.

CHANGES TO TERMS OR SERVICES

The Company reserves the right to make changes to the sites, policies, and to this Agreement at any time and without notice. **YOU SHOULD PRINT A COPY OF THIS AGREEMENT AND CHECK BACK FREQUENTLY FOR UPDATES.** Your continued use of our sites or of any purchased product or service following any future amendment constitutes your acceptance of any modified terms. If you have any questions regarding these terms, please contact customer care at daniel@getmyformula.com.

SITE CONTENT AND CONTENT RIGHTS

For purposes of these Terms: (i) "Content" means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services or sites; and (ii) "User Content" means any Content that Account holders (including you) provide to be made available through the Services or sites. Content includes without limitation User Content. Any information submitted on the site is subject to the terms of which are incorporated herein.

The Company neither endorses nor is responsible for the accuracy or reliability of any opinion or statement on the sites, nor for any offensive, defamatory or obscene posting made by any user. Under no circumstances will Company be liable for any loss or damage caused by your reliance on information obtained through the content on the sites. It is your responsibility to evaluate the accuracy, completeness and usefulness of any information, opinion or other content available through the sites. Please seek the advice of professionals, as

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Visitors and users may post reviews, comments, and other content, and submit suggestions, ideas, comments, questions, or other information, so long as the content is not illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam." You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of a card or other content.

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Under no circumstances, including, but not limited to, negligence, shall Company, its officers, directors, employees, or agents be liable (jointly or severally) for any direct, indirect, special, incidental or consequential damages of any kind, including, but not limited to, loss of use, data, or profit, on any theory of liability, arising out of or in connection with the use or the inability to use the materials on the site, even if Company or any Company representative

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Company and its associates attempt to be as accurate as possible. However, Company does not warrant that product descriptions or other content of this site is accurate, complete, reliable, current, or error-free. If a product offered by Company itself is not as described, your sole remedy is to return it in unused condition.

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You agree to defend, indemnify, and hold harmless Company, its officers, directors, employees, and agents, from and (i) against any claims, actions, or demands, including, but not limited to, reasonable legal and accounting fees, alleging or resulting from your use of the site or (ii) your breach of these Terms or (iii) your infringement of any intellectual property or privacy right of any person. Company shall provide notice to you promptly of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding.

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Further, you agree that any issue or dispute arising out of or in connection with your use of our site, intellectual property, the Terms, or any matter concerning Company shall be governed by the laws of the United States and the State of New York with venue in the Southern District of New York. If any provision of the Terms is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms, which shall remain in full force and effect.

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CONTACT

1 (646) 647-3599

HELLO@FINDMYFORMULA.COM ([https://web.archive.org/web/20210622045132/mailto:hello@findmyformula.com](mailto:hello@findmyformula.com))

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New York, NY 10010

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EXHIBIT “B”

Medical Disclaimer

Disclaimer

PLEASE READ CAREFULLY

In order to participate in Outliers' nootropics system, you must be at least 18 years of age and agree to the following Terms and Conditions.

OUTLIERS DOES NOT PROVIDE MEDICAL ADVICE. IF AT ANY TIME YOU EXPERIENCE A MEDICAL EMERGENCY, GO TO YOUR NEAREST EMERGENCY DEPARTMENT OR CALL 911 IMMEDIATELY. DO NOT RELY ON THE PRODUCTS OR OUTLIERS TO TREAT OR DIAGNOSIS ANY EMERGENCY OR NON-EMERGENCY MEDICAL OR PSYCHIATRIC CONDITION.

You should consult your physician or other health care professional before using any vitamins, supplements, or research chemicals, particularly if you are pregnant, plan to become pregnant, are breast feeding, have a history of high blood pressure or heart disease, or if you have ever experienced chest pain, smoke, have high cholesterol, are obese, or have a health problem that could be made worse by a change in diet.

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EXHIBIT “C”

Order #61543 is on the way  Estimated: 9:45 AM

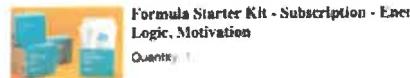
Order #61543

FORMULA



Good news!

We've got some good news! All of the items from your order #61543 have been shipped.



Shipment Details

They are being shipped via USPS to the following address below. The tracking number for these items is #40011108400836619552. Use the link below to see the status of your shipment.

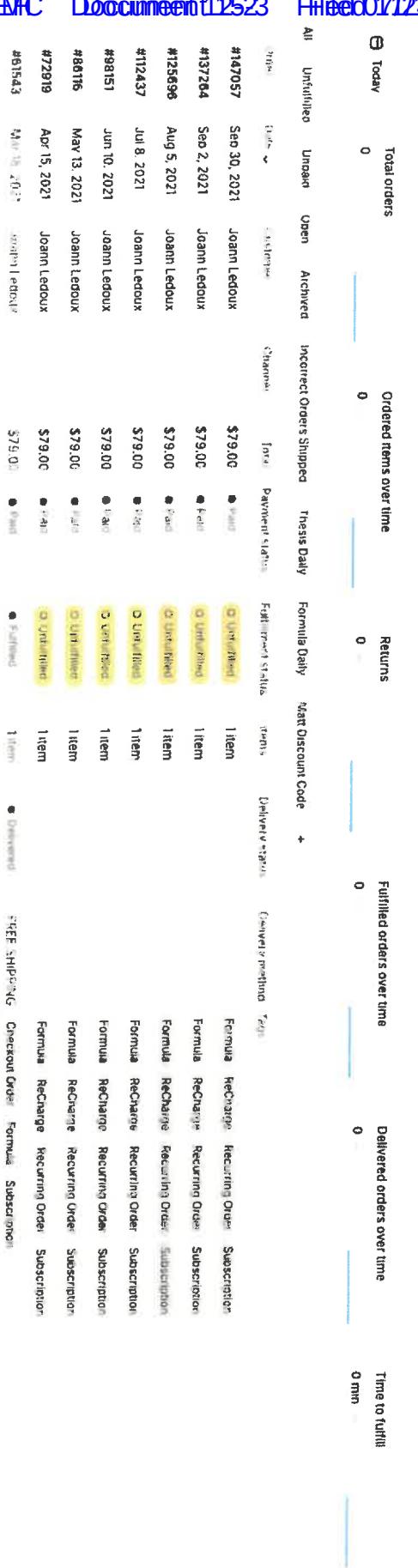
Joann Lecloux
1705 Dock Street
#148
Tacoma, Washington 98402
United States

[TRACK PACKAGE](#)

Please allow some time for the status of the shipment to connect to the above address. You will receive a confirmation email when all items in your order have been shipped. Thanks again for your order!



orders: All locations



Learn more about [PDR](#)

← Joann Ledoux

Tacoma, WA, United States • Customer for over 3 years

Amount spent	Orders	Customer
At/Time \$632.00	8	
Last order placed		
#147057 • Paid ○ Unfulfilled	\$79.00	
September 30, 2021 at 1:51 AM from  Recharge Subscriptions (via mobile)		
 Formula Starter Kit - Subscription Energy, Clarity, Logic, Motivation	x 1 \$79.00	Default address Joann Ledoux 1705 Dock Street #148 Tacoma Washington 98402 United States 1234567890
	View all orders	Create order
Timeline		
 Leave a comment		
	Only you and other staff can see comments	
Today		
• You sent a shipping confirmation email for order #61543 to yourself (katy@takethesis.com)	Just now	View email
• You sent an order confirmation email for order #61543 to yourself (katy@takethesis.com)	Just now	View email
September 30, 2021		
•  This customer placed order #147057 on Recharge Subscriptions	1:51 AM	
September 2, 2021		
•  This customer placed order #137264 on Recharge Subscriptions	1:22 AM	
August 5, 2021		
•  This customer placed order #125696 on Recharge Subscriptions.	1:18 AM	
July 8, 2021		
•  This customer placed order #112437 on Recharge Subscriptions	1:06 AM	
June 10, 2021		
•  This customer placed order #98151 on Recharge Subscriptions	1:19 AM	
May 13, 2021		
•  This customer placed order #86116 on Recharge Subscriptions	1:07 AM	
Contact information		
jo_ledoux@hotmail.com		
Will receive notifications in English		
Default address		
Joann Ledoux 1705 Dock Street #148 Tacoma Washington 98402 United States 1234567890		
Marketing		
<input type="radio"/> Email not subscribed		
<input type="radio"/> SMS not subscribed		
Tax settings		
Collect tax		
Store credit		
No store credit		
Tags		
 Inactive Subscriber		
Notes		
No notes		

Last order placed

#147057 • Paid Unfulfilled \$79.00

September 30, 2021 at 1:51 AM from  Recharge Subscriptions (Via Immerse)

 **Formula Starter Kit - Subscription**

Energy, Clarity, Logic, Motivation

x 1 \$79.00

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[Create order](#)

Default address

Joann Ledoux
1705 Dock Street
#148
Tacoma Washington 98402
United States
1234567890

Marketing

- Email not subscribed
- SMS not subscribed

Tax settings

[Collect tax](#)

Store credit

No store credit

Timeline



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September 30, 2021

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June 10, 2021

•  This customer placed order #98151 on Recharge Subscriptions. 1:19 AM

May 13, 2021

•  This customer placed order #86116 on Recharge Subscriptions. 1:07 AM

April 15, 2021

•  This customer placed order #72919 on Recharge Subscriptions. 1:28 AM

March 18, 2021

•  ShipStation sent a shipping confirmation email for order #61543 to this customer (jo_ledoux@hotmail.com) 1:16 PM

[View email](#)

•  CartHook Checkout sent an order confirmation email for order #61543 to this customer (jo_ledoux@hotmail.com) 3:09 AM

[View email](#)

•  This customer placed order #61543 on CartHook Checkout. 3:09 AM

•  CartHook Checkout created this customer 3:09 AM

Tags

 Inactive Subscriber [X](#)

Notes

No notes.

Order #61543 confirmed ➤ [Inbox](#) ×

 **Formula** <store+22758943@t.shopifyemail.com>
to me ▾

ORDER #61543

Thank you for your purchase!

Hi Joann, we're getting your order ready to be shipped. We will notify you when it has been sent.